IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6999 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT HARIJAN VIKAS MANDAL - Petitioner(s)
Versus
DIRECTOR & 1 - Respondent(s)

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Appearance :
MR RN SHAH for Petitioner(s) : 1,
MS SANDHYA NATANI, AGP. for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 28/02/2007

ORAL JUDGMENT

1 In light of the view that the Court is inclined to take, the

petition is taken up for final hearing and disposal today. **Rule.** The learned Assistant Government Pleader appearing on behalf of respondent authorities is directed to waive service.

2 This petition primarily challenges order dated 19.4.2003 made by respondent No.2 dismissing the appeal filed by the petitioner and confirming the order made by respondent No.1 – Authority on 3.1.2003 in the following circumstances.

3 The petitioner is a trust which is running Chhatralaya (Hostel) at village Vasnabuzarg, Taluka-District Kheda. It appears that on 12.10.2002 respondent No.1 issued a show cause notice on the basis of surprise inspection carried out on 9.10.2002. The inspecting team recorded seven defaults stated in the show cause notice. On the basis of such defaults respondent No.1 Authority issued show cause notice on the ground that : (1) there are number of irregularities in running the hostel; (2) the institution has neglected and failed to take care of the wards and (3) instructions issued for initiating remedial action has been ignored.

4 On 29.10.2002 the petitioner tendered a detailed reply. On 3.1.2003 respondent No.1 passed an order cancelling recognition granted to the petitioner trust to run a backward class students hostel at Vasnabuzarg, Taluka District Kheda.

5 The petitioner carried the matter in appeal before respondent No.2 which came to be dismissed vide order dated 19.4.2003.

6 The principal grievance made on behalf of the petitioner is to the effect that the order made by respondent No.1-Authority is bereft of reasons and moreover the Appellate Authority while confirming order dated 3.1.2003 has only reiterated what was stated in the inspection report dated 4.1.2003. As against that on behalf of respondent authorities the learned Assistant Government Pleader has submitted that the petitioner trust has committed number of defaults as can be seen from the Affidavit-in-Reply and considering such past defaults, reluctance of the petitioner trust to take remedial measures, and the statement of the Warden of the Hostel recorded on 9.10.2002 by the inspection team, in light of the serious irregularities which have come on record no interference is called for in the impugned orders.

7 When one goes to the show cause notice it becomes apparent that the same is based on the report of the inspection team dated 9.10.2002 and there is no reference in the show cause notice to past defaults of 1998 and 1999 which have been referred to in the Affidavit-in-Reply. Though the statement of the Warden of the hostel has been referred to a copy thereof has not been supplied to the petitioner, but the copy is annexed to the affidavit-in-reply. Furthermore, the petitioner has tendered a detailed reply. After reproducing the said reply in the impugned order the authority merely records that the explanation tendered is not acceptable and there are serious irregularities. There is no reason forthcoming, atleast none is discernible from the order dated 3.1.2003 as to why explanation tendered by the petitioner is not acceptable. Nor is there any reference in the impugned order to the so called past

defaults which are referred to for the first time only in the Affidavit-in-Reply. There is one additional reason in the impugned order made by respondent No.1 Authority, viz., that the area is not sufficient. This reason comes for the first time in the order without any show cause notice or any intimation to the petitioner trust as regards insufficiency of the area.

8 The aforesaid factor about insufficiency of the area has to be appreciated in context of the fact that the petitioner trust has been granted recognition and is running hostel since 1976-77. In the event the area of the hostel was insufficient there has to be evidence on record to show as to at what point of time the area is found to be insufficient and for this purpose also it was necessary to call upon the petitioner to explain. There is nothing on record to suggest that in 1976-77 the area was larger and has subsequently been reduced so as to warrant such a finding. In the circumstances, this finding has no nexus with the facts available on record.

9 Furtheremore when one examines the order made by the Appellate Authority it is apparent that the Appellate Authority has proceeded on a factor which did not even enter the decision making process when respondent No.1- Authority made order on 3.1.2003. The Appellate Authority has referred to inspection report dated 4.1.2003 of the District Welfare Officer, Panchayat, which was never the basis, either of the show cause notice or the order under Appeal. Therefore, on this solitary ground the order of the Appellate Authority cannot be sustained.

10 In the aforesaid set of facts and circumstances, it is apparent that neither the order made by respondent No.1 – Authority nor the order made by the Appellate Authority have been made in accordance with requirements of law. The petitioner has not been given adequate opportunity to meet with material which has been taken into consideration during the decision making process. The explanation tendered by the petitioner has not been considered and no reasons are advanced as to why the explanation is not acceptable. It is equally well settled that an order cannot be supported on basis of reasons which have come on record for the first time by way of Affidavit-in-Reply. Hence, both the orders dated 3.1.2003 and 19.4.2003 made by respondent authorities are quashed and set aside. Needless to state that, if the respondent authorities are of the opinion that the petitioner trust is not running the hostel as required by the relevant Rules and Regulations it will be open to the authorities to take appropriate action in accordance with law after observing the principles of natural justice and the requirements of law.

11 The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A. Mehta, J)

m.m.bhatt